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# Discrepancies Between Legal Norms and Practices in the Protection of Notaries

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## Abstract

This study examines the legal protection afforded to notaries in the execution of their official duties, particularly in the context of criminal legal proceedings. Utilizing a normative legal approach and detailed case analysis, the research reveals that the current legal protection mechanisms for notaries remain suboptimal, largely due to the inadequate enforcement of Article 66 of the Notary Law. The frequent criminalization of notaries is attributed to ambiguous distinctions between ethical breaches, administrative violations, and criminal offenses. Although the Notary Honorary Council (MKN) is designated to serve as an initial filter in such matters, its role is frequently overlooked by law enforcement agencies. This study advocates for the strengthening of the MKN's authority, the development of integrated procedural guidelines, and the harmonization of relevant laws and regulations to ensure more effective and equitable legal protection for notaries. The findings aim to inform future legal reforms focused on safeguarding the integrity of the notary profession.

**Keywords:** *Legal Protection, Notary, Criminalization, Notary Honorary Council*

## Abstrak

Penelitian ini membahas perlindungan hukum terhadap notaris dalam pelaksanaan jabatannya, khususnya saat menghadapi proses hukum pidana. Berdasarkan pendekatan normatif dan analisis kasus, ditemukan bahwa perlindungan hukum bagi notaris masih belum optimal, terutama karena lemahnya implementasi Pasal 66 Undang-Undang Jabatan Notaris. Kriminalisasi sering terjadi akibat tidak jelasnya batas antara pelanggaran etik, administratif, dan tindak pidana. Majelis Kehormatan Notaris (MKN) seharusnya berperan sebagai filter awal, namun fungsinya kerap diabaikan oleh aparat penegak hukum. Penelitian ini merekomendasikan penguatan peran MKN, penyusunan pedoman terpadu, serta harmonisasi peraturan perundang-undangan agar perlindungan hukum terhadap notaris lebih efektif dan adil. Diharapkan temuan ini menjadi dasar bagi reformasi hukum yang berorientasi pada perlindungan profesi notaris.

**Kata kunci:** *Perlindungan Hukum, Notaris, Kriminalisasi, Majelis Kehormatan Notaris (MKN)*

## 1. INTRODUCTION

Notaries are public officials who occupy a strategic role in the provision of legal services, particularly in the term of civil law. Entrusted by the state, notaries are authorized to draft authentic deeds—documents that possess full evidentiary value under the law.<sup>1</sup> These authentic deeds serve as written proof in a variety of legal matters, such as contracts, declarations, or certifications required by the involved parties. In performing their duties, notaries are bound by a code of ethics, statutory regulations, and the principle of prudence to ensure the legitimacy and legal validity of the documents they produce.

Nevertheless, in practice, legal complications frequently arise that escalate into criminal proceedings, wherein notaries may be implicated as suspects or defendants. These cases often stem from deeds executed at the behest of clients, and typically originate from civil disputes between parties who initially entered into legally binding agreements, but later encounter conflicts and seek criminal remedies. Such developments raise serious concerns within the notarial profession, as positions that are fundamentally intended to be legally protected become increasingly susceptible to criminal prosecution.

This context prompts a critical question regarding the scope and effectiveness of legal protections afforded to notaries in the execution of their official duties. Legal protection should not be narrowly interpreted as legal immunity; rather, it should encompass guarantees that notaries acting within the bounds of their authority and in compliance with prevailing legal norms are shielded from unwarranted criminal liability.<sup>2</sup> Accordingly, when notaries discharge their responsibilities in good faith and within the framework of the law, the legal system must offer safeguards against the risk of unjust criminalization.

Law No. 30 of 2004 concerning the Position of Notary, as amended by Law No. 2 of 2014 (hereinafter referred to as the UUJN), provides a comprehensive legal framework governing the role, duties, authority, and accountability of notaries. Article 16(1)(a) of the UUJN explicitly mandates that notaries must act honestly, thoroughly, independently, impartially, and with due regard for the interests of the parties concerned. Despite adherence to these obligations, notaries are, in certain instances, still subject to criminal allegations.

This phenomenon underscores a broader ambiguity in the application of criminal law to the notarial profession. When disputes arise from authentic deeds, resolution should, as a matter of principle, be pursued through civil or administrative channels.

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<sup>1</sup> Dedy Mulyana and Rika Kurniasari Abdughani, “Tanggung Jawab Notaris/PPAT Terhadap Akta Jual Beli Tanah Yang Batal Demi Hukum,” *Juris and Society: Jurnal Ilmiah Sosial Dan Humaniora* 1, no. 1 (2021): 106–18.

<sup>2</sup> Fabryan Nur Muhammad, Yeni Widowaty, and Trisno Raharjo, “Penerapan Sanksi Pidana Terhadap Pemalsuan Akta Otentik Yang Dilakukan Oleh Notaris,” *Media of Law and Sharia* 1, no. 1 (2019): 1–13, <https://doi.org/10.18196/mls.v1i1.7526>.

However, it is not uncommon for aggrieved parties to resort immediately to criminal proceedings, implicating notaries as liable actors—despite their limited role as impartial recorders of mutual agreements. A pertinent illustration of this issue is found in Decision No. 196/Pid.B/2019/PN.Dps, upheld by the Review Decision No. 20/PK/PID/2020. In that case, a notary was prosecuted for drafting a Power of Attorney to Sell land at the request of one party, who subsequently misused the document to the detriment of another party. The deed served as the basis for a transaction resulting in significant financial loss, and the notary was ultimately subjected to criminal proceedings on allegations of complicity in fraud.

However, the facts presented during the trial indicated that the notary in question neither harbored malicious intent nor engaged in any active participation in the unlawful act. The notary merely executed his professional duties based on the documents and declarations submitted by the parties, which, on the surface, appeared to meet administrative requirements.<sup>3</sup> Ultimately, the court concluded that there was insufficient evidence to establish the notary's criminal liability, resulting in a full acquittal of all charges. This judicial outcome underscores the critical importance of ensuring legal protection for notaries, particularly when their actions are conducted within the appropriate boundaries of legal authority and procedural compliance.

Without sufficient legal safeguards, notaries may become disproportionately vulnerable to criminal prosecution for actions that fall outside their control, thereby undermining their professional independence and eroding the security necessary for the effective performance of their duties. In this context, the Constitutional Court, through Decision No. 49/PUU-X/2012, emphasized that investigators, public prosecutors, and judges who intend to examine notaries in criminal cases arising from the exercise of their official functions must first obtain approval from the Regional Notary Supervisory Council (Majelis Pengawas Daerah, MPD). This requirement is intended to serve as a procedural safeguard, ensuring that notaries are not prematurely designated as suspects or defendants without undergoing an initial process of administrative clarification.

Nonetheless, this provision is frequently disregarded in practice. Law enforcement authorities often proceed with investigations and designate notaries as suspects without adhering to the mandated procedural framework. This persistent deviation from the established legal procedure highlights the ongoing ineffectiveness of legal protections for notaries in actual practice. Several factors contribute to this deficiency, including limited understanding among law enforcement personnel regarding the scope of notarial authority and responsibility, inadequate coordination between notarial supervisory bodies and investigative authorities, and the absence of a robust

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<sup>3</sup> Jenifer Maria, "Pembatalan Akta Notariil Oleh Notaris," *Jurnal Ilmu Sosial Dan Pendidikan* 4, no. 4 (2020): 408–15, <http://dx.doi.org/10.58258/jisip.v4i4.1547>.

enforcement mechanism to sanction procedural violations in the examination of notaries.

In an ideal legal system, protection for notaries should constitute a fundamental component of equitable and proportionate law enforcement. Notaries must be afforded the necessary institutional and procedural guarantees to carry out their professional obligations without undue pressure or the threat of arbitrary criminal prosecution. Legal protections should also encompass the assurance of due process, including the implementation of procedural safeguards consistent with statutory provisions and the oversight of law enforcement practices in cases involving members of the notarial profession.

As public officials authorized by the state to draft authentic deeds, notaries have increasingly become the subject of scholarly legal inquiry in Indonesia. One such study by Wahid Ashari Mahaputera<sup>4</sup> explores the responsibilities and legal protections afforded to notaries who are named as co-defendants due to the content of the deeds they have prepared. Mahaputera underscores the significance of the Notary Honorary Council (Majelis Kehormatan Notaris, MKN) as a vital institutional mechanism for safeguarding notaries against legal vulnerabilities.

Similarly, Fristy Ayu Yannisa<sup>5</sup> examines a criminal case involving allegations of certificate embezzlement by a notary. Her analysis centers on the principles of criminal liability and concludes that, although the constituent elements of the crime may be established, notaries can be acquitted based on legally recognized justifications. In another contribution, Maraja Malela Marpaung<sup>6</sup> highlights the inconsistencies between the Notary Law (UUJN) and the Indonesian Criminal Procedure Code, particularly regarding the legal recourse available to notaries subjected to dishonorable dismissal. The absence of a formal mechanism for status restoration in cases where notaries are later acquitted of wrongdoing is identified as a critical gap in the legal framework.

Furthermore, Anandiaz Raditya Priandhana et al.<sup>7</sup> provide a detailed examination of Constitutional Court Decision No. 16/PUU-XVIII/2020, bringing attention to the restricted authority of the MKN in the context of granting approval for the summoning of notaries during criminal investigations. This study affirms the urgent need for

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<sup>4</sup> Wahid Ashari Mahaputera, "Perlindungan Hukum Dan Pertanggungjawaban Bagi Notaris Yang Menjadi Turut Tergugat Terhadap Akta Yang Telah Dibuatnya," *Indonesian Notary* 3, no. 2 (2021): 657–76, <https://scholarhub.ui.ac.id/notary/vol3/iss2/36/>.

<sup>5</sup> Fristy Ayu Yannisa, "Kajian Hukum Terhadap Putusan Bebas Notaris Yang Melakukan Penggelapan Sertifikat Hak Guna Bangunan: Studi Putusan Pengadilan Negeri Nomor 53/Pid.b/2017/Pn/Bkt," *Jurnal Ilmiah Mahasiswa Hukum* 1, no. 1 (2021): 1–10, <https://jurnalmahasiswa.umsu.ac.id/index.php/jimhum/article/view/116>.

<sup>6</sup> Maraja Malela Marpaung, "Perlindungan Hukum Terhadap Notaris Yang Telah Diberhentikan Berdasarkan Pasal 13 Undang Undang Jabatan Notaris," *Jurnal Pro Hukum: Jurnal Penelitian Bidang Hukum Universitas Gresik* 8, no. 1 (2019): 132–143, <https://doi.org/10.55129/jph.v8i1.872>.

<sup>7</sup> Anandiaz Raditya Priandhana, "Perlindungan Hukum Terhadap Notaris Dalam Proses Penyidikan: Studi Putusan Mahkamah Konstitusi Nomor 16/PUU-XVIII/2020," *Indonesian Notary* 3, no. 1 (2021): 731–53, <https://scholarhub.ui.ac.id/notary/vol3/iss1/12/>.

procedural safeguards to prevent the misuse of criminal law against notaries acting within the bounds of their official duties.

In a more recent contribution, Melania Santa Inne Nanjong<sup>8</sup> emphasizes that authentic deeds executed by notaries are not merely administrative documents but represent the formal expression of the parties' intentions and reflect the state's legal functions as performed through the notarial office. Collectively, these studies, which predominantly employ normative legal methodologies, conclude that while notaries are functionally regarded as public officials, gaps persist in the practical legal protections afforded to them—particularly in situations involving criminal allegations.

Despite the growing body of literature addressing legal protection for notaries, a significant analytical gap remains—particularly in doctrinal study that interrogates the tension between the lawful execution of notarial duties and the criminalization of those duties under certain circumstances. Existing scholarship has largely focused on the position of notaries as co-defendants in civil proceedings, with limited attention given to their role as primary defendants in criminal cases. Moreover, no comprehensive study has critically examined District Court Decision No. 196/Pid.B/2019/PN.Dps, affirmed by the Supreme Court Review Decision No. 20/PK/PID/2020, which exemplifies the complex and troubling dynamics of criminal prosecution arising from acts performed by notaries in the exercise of their official functions.

This study proposes a novel approach by conducting an in-depth examination of a real-life criminal case involving a notary who was initially prosecuted for actions undertaken in the course of his official duties, but ultimately acquitted following a protracted legal process. In addition to providing a normative analysis of the Law on Notary Office (UUJN), the Indonesian Penal Code (KUHP), and the Criminal Procedure Code (KUHAP), this study critically evaluates the evidentiary findings and judicial reasoning articulated in the court's decision. These elements are analyzed as concrete illustrations of the structural deficiencies in the legal protection afforded to notaries within Indonesia's criminal justice system.

By situating the discussion within the broader context of the criminalization of notarial functions, this research addresses a significant gap in the academic discourse on legal safeguards for notaries. Accordingly, there is a pressing need for comprehensive research on both the form and practical implementation of legal protections for notaries, particularly in relation to their exposure to criminal prosecution.

The primary objectives of this study are to analyze the criminal liability of the notary in the case of District Court Decision No. 196/Pid.B/2019/PN.Dps using a legal doctrinal approach and case analysis; to delineate the legal boundaries between the

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<sup>8</sup> Melania Santa Inne Nanjong, "Perlindungan Hukum Terhadap Notaris/Ppat Yang Berindikasi Melakukan Perbuatan Pidana: Studi Kausus Putusan Mahkamah Agung Republik Indonesia Nomor 310 K/Pid.Sus/2022," *Unes Law Review* 6, no. 2 (2023): 6312–24, <https://doi.org/10.31933/unesrev.v6i2.1355>.

execution of notarial duties and the commission of criminal acts; and to assess whether the notary's prosecution in the case was consistent with the foundational principles of criminal law and public office. Additionally, the study seeks to evaluate the effectiveness of legal protections offered by the Notary Honorary Council (Majelis Kehormatan Notaris), the UUJN, and other relevant statutory instruments in preventing the misuse of criminal proceedings against notaries. Finally, the study aims to offer legal and normative recommendations for strengthening the legal framework to ensure more comprehensive, consistent, and equitable protection for notaries in the exercise of their public authority.

## **2. RESEARCH METHODOLOGY**

This study employs normative legal research, which primarily focuses on the analysis of written legal norms, including statutes, regulations, legal principles, and pertinent legal doctrines. The central aim is to examine the legal foundations for protecting notaries in the performance of their duties, with particular emphasis on criminal law contexts. To complement the normative framework, the study incorporates a limited empirical component to provide insight into the practical implementation of legal protections. This is achieved through case studies and interviews with relevant stakeholders, such as notaries, supervisory authorities, and law enforcement officials.

Multiple research approaches are utilized. The statutory approach facilitates the examination of key regulations, including the Notary Law, the Criminal Code, the Criminal Procedure Code, and Constitutional Court decisions. A conceptual approach is applied to clarify fundamental notions such as legal protection and the criminal liability of notaries. Furthermore, a case approach enables detailed analysis of concrete legal cases involving notaries, thereby illuminating the practical application of legal norms.

The sources of data comprise primary legal materials—including legislation, the Criminal Code, the Criminal Procedure Code, and associated implementing regulations—secondary legal materials such as academic books, peer-reviewed journals, and prior research studies, as well as tertiary materials like legal dictionaries and encyclopedias. Data collection is conducted through comprehensive literature review and examination of court decision documents. All collected materials are analyzed qualitatively by comparing applicable legal norms with actual practices, thereby identifying congruencies, discrepancies, and potential gaps in the legal protection.

## **3. RESEARCH RESULT AND DISCUSSION**

### **3.1. Criminal Liability of Notaries in the Case of Decision Number 196/Pid.B/2019/PN.Dps**

Decision Number 196/Pid.B/2019/PN.Dps concerns a criminal case involving the notary Ni Ketut Neli Asih, S.H., who was charged with allegedly facilitating the commission of fraud by providing opportunity or means. The case originated from the creation of a power of attorney to sell, which included a sale and purchase clause as well as an absolute power of attorney. This document was subsequently misused by a third party to perpetrate fraud against land buyers.

At first instance, the Denpasar District Court found the notary guilty and sentenced her to one year and four months of imprisonment. This sentence was subsequently reduced to one year and two months by the Denpasar High Court. However, the Supreme Court, in Decision No. 20 PK/Pid/2020, overturned both lower court rulings, concluding that the notary's conduct did not constitute a criminal offense but rather an administrative violation.

Under criminal law principles, criminal liability for a notary may only be imposed when there is clear evidence of intentional wrongdoing or negligence that results in harm to another party. As public officials entrusted with an essential duty—namely, the preparation of deeds carrying binding legal force—notaries bear significant responsibilities. Consequently, if a notary intentionally or negligently causes harm while performing official duties, criminal liability may be appropriate. However, such liability must be grounded in a meticulous analysis of the alleged criminal elements to prevent misapplication of the law.

In the present case, the notary was accused of drafting a power of attorney to sell containing a clause granting absolute authority to the power of attorney recipient. This provision is considered to contravene Article 39 paragraph (1) letter d of Government Regulation Number 24 of 1997 concerning the Position of Notaries, which explicitly prohibits notaries from creating powers of attorney that confer absolute sales authority. The rationale behind this prohibition is to prevent potential abuse of authority and protect third parties from harm. Deeds containing such clauses may facilitate fraudulent activities and cause legal detriment.

Despite these facts, a fundamental divergence exists between the lower courts and the Supreme Court regarding the legal classification of the notary's conduct. The trial court held that the notary's actions satisfied the elements of a criminal offense, justifying the imposition of criminal sanctions. In contrast, the Supreme Court interpreted the actions as constituting an administrative infraction rather than a criminal act. According to the Supreme Court, the notary's conduct lacked the requisite elements of intent or gross negligence necessary to establish criminal culpability. Instead, it was deemed a violation of ethical standards and administrative regulations governing the notary profession.

The Supreme Court's ruling underscores the critical importance of distinguishing between administrative violations and criminal offenses within the context of notarial

duties. Administrative infractions may warrant sanctions such as reprimands, license revocation, or other internal disciplinary measures, whereas criminal offenses entail a more severe legal process, potentially resulting in imprisonment or fines. Appropriate law enforcement responses calibrated to the nature of the violation are essential to prevent disproportionate punitive measures that could unduly harm notaries, while simultaneously preserving the integrity and public trust vested in the notarial profession.

The imposition of criminal liability on the notary in this case has sparked considerable debate, reflecting the marked divergence in legal interpretations between the trial and appellate courts and the Supreme Court. Both the District Court and the High Court concluded that the notary met the elements of criminal fraud as stipulated under Article 378 in conjunction with Article 56(2) of the Indonesian Criminal Code (KUHP). These courts reasoned that the notary's conduct demonstrated intent to cause harm to another party, thereby justifying criminal sanctions. Their decisions were premised on an interpretation that the deed executed by the notary contained elements of manipulation that resulted in legal harm to clients or other affected parties, thus triggering serious criminal consequences.

In contrast, the Supreme Court, in its cassation ruling, rejected this interpretation, holding that the notary's actions did not satisfy the essential elements of a criminal offense as identified by the lower courts. The Supreme Court regarded the conduct as more suitably classified as an administrative violation subject to sanctions under the Notary Law. This perspective emphasizes that not all errors or breaches committed by a notary in the course of official duties warrant criminal prosecution, especially in cases where intent or actual harm is difficult to establish beyond reasonable doubt.

The Supreme Court's decision highlights the necessity for clear and well-defined boundaries between administrative breaches and criminal acts within the notarial profession. Such clarity is indispensable to ensure that law enforcement is conducted in a manner that is both fair and proportionate to the nature and severity of the violation.

### **3.2. Legal Boundaries Between Notarial Official Acts and Criminal Offenses**

This study aims to delineate the legal boundaries between notarial official acts and criminal offenses, as well as to evaluate the appropriateness of criminal sanctions imposed on notaries in the case of Decision Number 196/Pid.B/2019/PN.Dps in light of fundamental principles of criminal law and professional duties. The role of a notary, as a public official authorized by the state to execute authentic deeds, is characterized by specific legal parameters and is subject to stringent regulatory oversight. Consequently, a thorough understanding of the distinctions between administrative errors, breaches of professional ethics, and criminal conduct is essential to ensure equitable and proportionate law enforcement.



Firstly, an examination of relevant legislation, particularly Law Number 30 of 2004 concerning the Position of Notaries and its amendment under Law Number 2 of 2014, reveals that the notary's office is clearly defined and comprehensively regulated. Notaries are empowered to create authentic deeds that possess full evidentiary weight, and they function as public officials within this remit. In fulfilling their responsibilities, notaries must adhere strictly to applicable legal provisions, refraining from actions that exceed their authority or cause harm to others through intentional misconduct or negligence. Nonetheless, not all errors or breaches committed in the course of notarial duties constitute criminal offenses. Many infractions fall within the administrative and ethical domains, with corresponding sanctions governed by professional regulations and the notarial code of ethics.<sup>9</sup>

Secondly, analysis of the judicial decisions in case Number 196/Pid.B/2019/PN.Dps highlights a contentious debate regarding whether the notary's conduct constitutes a criminal offense. At the District Court and High Court levels, the notary was found to have committed criminal fraud under Article 378 of the Criminal Code, predicated on the allegation that the power of attorney to sell included clauses inconsistent with legal provisions, resulting in losses to third parties. These courts argued that the elements of intent and malicious harm were satisfied, thus warranting criminal liability. However, the Supreme Court, in its cassation ruling, rejected this characterization and held that the notary's actions were more appropriately addressed as administrative violations rather than criminal offenses. The Supreme Court reasoned that the requisite elements of criminal intent and demonstrable harm were not convincingly established, and therefore, the criminalization of the notary contravened principles of legality and legal certainty.

Thirdly, this discourse underscores the critical need to distinguish between administrative violations, ethical breaches, and criminal offenses within the notarial context. The principles of criminal law mandate the presence of subjective fault (*mens rea*) and actual, legally provable harm to justify criminal prosecution. Absent these elements, alleged misconduct should be addressed through administrative sanctions or professional disciplinary mechanisms. Administrative errors by notaries typically include procedural lapses, inconsistencies in deed formatting, or inadvertent negligence—issues that primarily affect internal supervisory processes and are rectifiable through oversight by the Notary Supervisory Board.

Furthermore, in evaluating the appropriateness of criminal sanctions imposed on notaries, it is imperative to consider the professional principles inherent to the notarial office. Notaries are distinguished from ordinary public officials by the special trust vested in them by the state to guarantee the authenticity and legal validity of documents.

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<sup>9</sup> Anugrah Yustica, Ngadino Ngadino, and Novira Maharani Sukma, "Peran Etika Profesi Notaris Sebagai Upaya Penegakan Hukum," *Notarius* 13, no. 1 (2019): 60–71, <https://doi.org/10.14710/nts.v13i1.29162>.

Accordingly, legal protection for notaries must adhere to the principles of caution and proportionality in the imposition of sanctions to preserve both the function and integrity of the notarial office. The application of criminal sanctions without robust evidentiary support, and without due regard for the unique character of the notarial role, risks generating a chilling effect—whereby notaries may become reluctant to perform their duties effectively due to the disproportionate threat of criminal liability.

This analysis indicates that the criminal sanctions levied against the notary in the present case do not fully comply with foundational principles of criminal law, particularly the principle of legality, which mandates clarity of criminal elements and the presence of valid evidence. Moreover, sanctions must align with the principles governing the notarial office, which emphasize the protection of officials who execute their public functions with professionalism and ethical integrity.<sup>10</sup> Consequently, law enforcement actions involving notaries must be exercised with prudence, ensuring a clear demarcation between administrative infractions and criminal offenses.

This study further underscores the necessity to update or strengthen regulatory frameworks to clearly distinguish between violations warranting administrative sanctions and those meriting criminal prosecution. Such regulatory clarity is essential to provide legal certainty for notaries in the performance of their duties, while simultaneously safeguarding the interests of the public who rely on notarial services. Transparent supervisory mechanisms and well-defined regulatory standards are also critical to mitigating potential abuses of office and maintaining public confidence in the notarial profession.

### **3.3. Effectiveness of Legal Protection Provided by the Notary Honorary Council, the Notary Law, and Related Regulations**

This study aims to evaluate the effectiveness of legal protection mechanisms offered by the Notary Honorary Council (MKN), Law Number 30 of 2004 concerning Notary Positions (UUJN) and its amendments, as well as other relevant laws and regulations, in preventing the criminalization of the notary profession. As public officials vested with special authority to authenticate legal documents, notaries hold a strategically important role in ensuring legal certainty and maintaining public trust in such documents. However, this pivotal role also exposes notaries to risks of criminalization, whereby disproportionate criminal charges may be levied in response to administrative or professional errors that are more appropriately addressed through disciplinary channels.

First, the Notary Honorary Council, as the supervisory body overseeing the notary profession, primarily functions to uphold the honor and dignity of the profession by

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<sup>10</sup> Habib Adjie, *Sanksi Perdata & Administratif Terhadap Notaris Sebagai Pejabat Publik* (Bandung: Refika Aditama, 2008); Agus Santoso, *Hukum, Moral & Keadilan* (Jakarta: Prenada Media, 2015); Latifah Latifah, "Tanggung Jawab Notaris Dalam Pelanggaran Kode Etik Notaris," *Officium Notarium* 1, no. 1 (2021): 144–54, <https://doi.org/10.20885/JON.vol1.iss1.art15>.

enforcing the code of ethics and administering disciplinary sanctions for violations. In practice, the Honorary Council serves as the initial line of defense, providing a forum to address and resolve professional issues before they escalate into criminal proceedings. The Council's existence exerts a deterrent effect and offers suitable guidance for notaries who commit administrative or ethical infractions. This internal mechanism allows for the resolution of administrative matters, thereby mitigating excessive criminal prosecutions and reducing the risk of unwarranted criminalization.

Second, the Notary Law and its implementing regulations establish a comprehensive legal framework governing the duties, authorities, rights, obligations, and sanctions applicable to notaries. The legislation underscores that violations not meeting the threshold of criminality should be resolved through administrative or professional disciplinary mechanisms. Additionally, the law provides protective provisions for notaries in the exercise of their duties, including rights of objection and self-defense during examinations conducted by the Supervisory Council or law enforcement authorities. An analysis of the Notary Law and its derivative regulations reveals that these provisions embody the principle of caution in sanctioning notaries and delineate clear boundaries between administrative infractions and criminal offenses.

Nonetheless, the study identifies several impediments to the effective implementation of these legal protections. A significant obstacle is the overlapping jurisdiction between law enforcement agencies and the Notary Honorary Council, which at times results in cases being prematurely escalated to the criminal justice system without first exhausting internal supervisory and remedial mechanisms. This overlap risks accelerating the criminalization of notaries without adequately considering the context of their professional conduct or the nature of the alleged errors. Furthermore, a lack of comprehensive understanding among notaries regarding their rights and available protection mechanisms renders them vulnerable to criminal charges that might otherwise be averted through proper disciplinary processes.

Furthermore, the effectiveness of legal protection is closely contingent upon the quality and independence of the Notary Honorary Council itself. Analysis of several Council decisions reveals inconsistencies in the application of sanctions and interpretation of the code of ethics, which at times appear to be influenced by external pressures or vested interests. Such variability fosters perceptions of unequal protection and may undermine notaries' trust in the professional supervisory mechanism. Therefore, enhancing the capacity, transparency, and accountability of the Notary Honorary Council is essential for strengthening the legal safeguards afforded to the notary profession.

Regarding other pertinent legislation, including the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP), the study identifies a lack of specific provisions explicitly addressing the unique legal status and professional characteristics of officials

such as notaries. Consequently, law enforcement personnel may lack adequate understanding of the limitations and principles of caution that ought to govern the handling of cases involving notaries. This deficiency increases the risk of disproportionate penalties that contravene the fundamental principle of criminal law as an *ultimum remedium*—a last resort.<sup>11</sup> Accordingly, improved coordination and comprehensive dissemination of regulatory frameworks among law enforcement agencies are imperative to prevent misapplication of the law concerning the notary profession.

Additionally, the study underscores the importance of enhancing legal education and awareness among notaries themselves as a proactive measure. Notaries equipped with a thorough understanding of the scope and limits of their duties and rights are better positioned to navigate legal challenges and reduce the likelihood of errors leading to criminalization. Ongoing training programs and transparent communication of regulatory developments can further reinforce legal protections and foster a culture of professionalism and integrity within the notary community.

### **3.4. Recommendations for a Legal Protection System for Notaries in Exercising Their Public Authority**

Notaries are public officials authorized by the state to execute authentic deeds and perform public functions in various civil matters. In exercising this authority, notaries bear significant responsibility, as their acts serve as valid and binding evidence before the law.<sup>12</sup> However, in practice, notaries frequently encounter situations that expose them to the risk of criminalization. This occurs when actions that should be categorized as administrative or ethical violations are mischaracterized as criminal offenses due to erroneous legal interpretations, external pressures, or weaknesses in the legal protection system.

This study aims to provide legal and normative recommendations to enhance the protection system for notaries. Through comprehensive analysis of relevant legislation, legal doctrines, and case studies—particularly Decision Number 196/Pid.B/2019/PN.Dps—it becomes evident that the current legal framework does not adequately offer proportional and fair protection to notaries. Although existing legal provisions, such as Law Number 30 of 2004 concerning the Position of Notaries (as amended by Law Number 2 of 2014) and the establishment of the Notary Honorary Council (MKN), provide foundational protection mechanisms, practical challenges

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<sup>11</sup> Ramdlon Mahuraden Tuakia, “The Judge’s Authority to Cancel a Notary Deed as Evidence in Court,” *Jurnal Ilmu Hukum Kyadiren* 3, no. 2 (2022): 101–110, <https://doi.org/10.46924/jihk.v3i2.154>.

<sup>12</sup> Chandra Novita, “Tanggung Jawab Dan Perlindungan Hukum Terhadap Werda Notaris,” *Lex Renaissance* 2, no. 2 (2017): 331–53, <https://doi.org/10.20885/JLR.vol2.iss2.art4>.

remain. These include jurisdictional overlaps and procedural deviations between supervisory bodies and law enforcement agencies.

Notably, cases involving notaries as suspects or defendants in criminal proceedings are frequently initiated without prior ethical or administrative review by the Honorary Council or Supervisory Council. This practice contravenes Article 66 of the UUJN, which mandates that investigators, prosecutors, or judges must first obtain approval from the MKN before examining a notary in connection with their official duties. In several instances, this procedural safeguard has been neglected, resulting in the premature initiation of criminal investigations without a thorough legal assessment of whether the alleged conduct constitutes a criminal offense or an administrative infraction. Such practices reflect a weak application of the principle of *ultimum remedium* in criminal law, where criminal sanctions should be employed strictly as a measure of last resort.

In light of these findings, the first recommendation is to strengthen the legal status and authority of the Notary Honorary Council. The MKN should be granted greater independence and binding authority to filter complaints or reports related to notarial conduct. Ethical and administrative evaluations by the MKN must be an obligatory prerequisite prior to any criminal investigation of notaries. This procedural safeguard would promote a more objective legal process and prevent the undue criminalization of actions conducted within the scope of official authority.<sup>13</sup>

Second, the legal protection framework for notaries requires enhancement through the refinement of criminal norms applicable to this profession, emphasizing the principle of differentiated treatment. Given that notaries function within the ambit of state and public duties, they should not be equated with ordinary legal subjects. Criminal legislation must delineate clear boundaries between acts performed in the discharge of official duties and acts characterized by malintent or personal misconduct. In this regard, the doctrine of intent (*mens rea*) plays a pivotal role in distinguishing administrative errors from genuine criminal offenses.

The third recommendation concerns the development of integrated guidelines jointly issued by the Notary Honorary Council (MKN), the Supreme Court, and the Attorney General's Office to govern the handling of legal cases involving notaries. These guidelines should articulate clear and precise criteria for distinguishing whether a notary's conduct constitutes a violation of the code of ethics, an administrative infraction, or a criminal offense. Additionally, they must specify the procedural requirements for obtaining examination permits and outline the safeguards for legal protection throughout the judicial process. The establishment of such standardized

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<sup>13</sup> Julio Omega Sakti, Dian Bakti Setiawan, and Yussy Adelina Mannas, "Keabsahan Akta Berita Acara Rapat Umum Pemegang Saham (RUPS) Tentang Perubahan Anggaran Dasar Dalam Keterlambatan Pemberitahuan Oleh Notaris Kepada Kementerian Hukum Republik Indonesia," *Unes Law Review* 7, no. 3 (2025): 1175–80, <https://doi.org/10.31933/unesrev.v7i3.2383>.

protocols will promote consistency in case management and mitigate the risk of arbitrary or disproportionate legal actions against notaries.<sup>14</sup>

Furthermore, the education and training system for notaries represents a critical component of efforts to enhance legal protection. Accordingly, the fourth recommendation advocates for the continuous improvement of legal education focused on notarial practice, including ongoing training in preventive criminal law and professional ethics. Equipping notaries with comprehensive knowledge of the legal risks inherent in their duties, alongside an understanding of available protection mechanisms, will fortify their legal standing and foster responsible, ethical professional conduct.

The fifth recommendation calls for substantive revisions to the Notary Law (UUJN), emphasizing the need to strengthen legal protection not only procedurally but also substantively. For instance, Article 66 should be supplemented with explicit and enforceable sanctions against investigators or law enforcement officers who fail to comply with the mandatory approval process of the MKN prior to examining a notary. Moreover, the UUJN must clarify the scope of legal liability for notaries by incorporating principles such as the protection of office and good faith as foundational elements underpinning notaries' legal defenses.

#### 4. CONCLUSION

This study underscores the critical importance of legal protection for notaries as public officials entrusted with the exercise of state authority in the civil domain. The findings reveal that the current legal protection framework for notaries is neither effective nor equitable. There exists a persistent tendency to criminalize notaries for conduct that more appropriately falls within the administrative or ethical spheres, stemming from ambiguous legal boundaries between the performance of official duties and criminal acts. The ineffective enforcement of Article 66 of Law Number 30 of 2004 concerning the Notary Position (UUJN), alongside the frequent disregard of the Notary Honorary Council's (MKN) role by law enforcement authorities, exemplifies a significant disjunction between normative legal provisions and their practical application.

To enhance legal protection for notaries, several strategic interventions are necessary. Firstly, the functional capacity of the MKN must be reinforced through amendments to the UUJN, granting the Council binding authority over investigators prior to the initiation of criminal investigations involving notaries. Secondly, the development of integrated legal guidelines, formulated collaboratively between law enforcement agencies and government bodies, is imperative to delineate clearly the boundaries among ethical breaches, administrative violations, and criminal offenses. Thirdly, legislative reforms should prioritize the incorporation of the element of "bad

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<sup>14</sup> Santoso, *Hukum, Moral & Keadilan*; Muhammad Luthfan Hadi Darus, *Hukum Notariat Dan Tanggungjawab Jabatan Notaris*, 1st ed. (Yogyakarta: UII Press, 2017).

faith” as a fundamental criterion for criminal liability. Additionally, professional organizations such as the Indonesian Notary Association (INI) should intensify efforts in legal advocacy, provide continuous professional development, and promote oversight mechanisms to monitor potential abuses of authority by investigators.

Further research is recommended to conduct comparative analyses of legal protection systems for notaries across different jurisdictions, assess the effectiveness and independence of the MKN, and undertake comprehensive legal analyses of criminal rulings involving notaries. Investigations into the interplay between civil and criminal law are also crucial for the establishment of a fair, integrative legal framework aimed at safeguarding the notary profession.

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